



**STEVEN L. BESHEAR**  
GOVERNOR

**EXECUTIVE ORDER**

2011-147  
March 7, 2011

**Secretary of State**  
Frankfort  
Kentucky

By virtue of the authority vested in me by Section 12.210(1) of Kentucky Revised Statutes and as Governor of the Commonwealth of Kentucky, I, Steven L. Beshear, do hereby approve an employment contract between **David Boswell, Boswell, Sims & Vasseur, PLLC** Paducah, Kentucky and **Murray State University** as outlined in the attached contract.

Please enter this Executive Order upon the Executive Journal and file the attached Contract with the Executive Order.

  
STEVEN L. BESHEAR  
Governor

  
ELAINE N. WALKER  
Secretary of State

RECEIVED AND FILED

DATE

3/8/11

ELAINE N. WALKER  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY *R. Adler*

COMMONWEALTH OF KENTUCKY  
Murray State University

**STANDARD CONTRACT  
FOR PERSONAL SERVICES  
OVER \$10,000**

THIS CONTRACT is made and entered into this

16th day of February, 2011,

by and between

Murray State University,  
(Agency)

**Personal Service  
Contract No. PSC** \_\_\_\_\_

FOAPAL100001 100755 60500  
Fund Org Acct Program

Encumbrance Amt. \$15,000.00

This Contract is effective on

\_\_\_\_\_  
(the date of its delivery to the  
Legislative Research Commission).

This Contract expires \_\_\_\_\_

Commonwealth of Kentucky, hereinafter referred to as the State Agency or as the First Party, and

David Boswell, Boswell, Sims & Vasseur, PLLC  
(Name of Individual or Firm)

(Social Security Number)

425 S. 6<sup>th</sup> Street Paducah KY 42003  
(Street Address) (City) (State) (Zip Code)

hereinafter referred to as the Contractor or as the Second Party.

WHEREAS, the State Agency, in the exercise of its lawful duties, has determined upon the necessity of the performance of the following-described function(s):

Provide legal representation to University for allegations of discrimination filed by MSU employee. Representation shall consist of advice and counsel to an MSU internal appeal committee in complaint filed against the employee and a related internal complaint filed by said employee against various other MSU employees based on discrimination.

\_\_\_\_\_, and

WHEREAS, the State Agency has concluded that either State personnel are not available to perform said function, or it would not be feasible to utilize State personnel to perform said function; and

WHEREAS, the Second Party is available and would be qualified to perform such function; and

WHEREAS, for the hereinbefore-stated reasons, the State Agency desires to avail itself of the services of the Second Party,

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

**1. SERVICES.**

The Second Party (the Contractor) will perform the services which are described with particularity in the attached letter (to which reference is made below) which is made a part hereof as if fully incorporated herein, or, if no letter is necessary, as hereinafter described with particularity as follows:

See attached letter

**2. CONSIDERATION.**

**A. FEE.**

As fee for the services hereinbefore set forth, the State Agency agrees to pay the Contractor one of the following, as indicated:

☐ the sum of \$ \_\_\_\_\_

☒ a sum not to exceed \$ 15,000.00

to be paid in the following manner or on the following terms:

Invoiced quarterly at the rate of \$125.00 per hour – Partner; \$40.00 per hour - Paralegal

The Contractor's invoice(s) for fee shall be signed and shall include not less than the following information:

Nature of service, date and amount

Payments on Personal Service Contracts shall not be authorized for services rendered after disapproval by the Government Contract Review Committee of the LRC unless overridden by the President of Murray State University.

The Contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by State Agency.

**B. TRAVEL EXPENSES, if authorized herein.**

The Contractor shall be paid for no travel expenses unless and except as specifically authorized by this paragraph as follows:

Travel as deemed necessary by University and Contractor

travel expenses, if authorized, shall be billed in the following manner:

Invoiced separately on a required basis

C. OTHER EXPENSES, if authorized herein.

The Contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized by this paragraph as follows:

Acceptable charges are: telephone expenses, postage, fax, copy fees, deposition fees

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If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the Contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by State Agency.

D. MAXIMUM FOR FEE AND EXPENSES.

The Contractor's fee, travel expense reimbursement (if any) and other expense reimbursement (if any) relative to the services shall not exceed a total of \$ 15,000.00.

3. INVOICING.

- A. Invoicing for Fee: The Contractor's fee shall be original invoice(s) and shall be signed by the Contractor. The invoice(s) must conform to the method prescribed under Section (2), Consideration, Paragraph A.
- B. Invoicing for Travel Expenses: The Contractor must follow instructions prescribed under Section (2), Consideration, Paragraph B. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous travel expenses.
- C. Invoicing for Miscellaneous Expenses: The Contractor must follow instructions prescribed under Section (2), Consideration, Paragraph C. Expenses submitted shall be either original or certified copies.

4. SIGNIFICANT CONTRACT DATES.

A. EFFECTIVE DATE.

Except as otherwise provided by law, this agreement is not effective unless and until the President of Murray State University or his authorized designee has approved and signed the contract and unless and until three copies of the contract are filed by the State Agency with the Legislative Research Commission, with each such copy being accompanied by documentation of the need for such service and by documentation that State personnel are not available to perform such service or that it is not feasible for State personnel to perform such service.

B. DATES WORK IS TO BE PERFORMED.

The period within the current fiscal year in which the services are to be performed under this contract is from March 15, 2011, to June 30, 2011.  
(Month & Day) (Month & Day)

C. EARLIEST DATE OF PAYMENT.

No payment on this contract shall be made before completion of the review procedure provided for in KRS 45A.705, unless and until alternate actions occur as set out in KRS 45A.695(8).

5. EXTENSIONS.

At the expiration of its initial term, this contract may, at the option of the parties hereto, be extended upon the same terms and conditions as set forth herein for further periods not to exceed twelve (12) months each, subject to the advance approval of the President of Murray State University.

**6. SOCIAL SECURITY. (Check One)**

☒

The parties are cognizant that the State is **not** liable for Social Security contributions pursuant to 42 U.S. Code, Section 418, relative to the compensation of the Second Party for this contract.

**OR**

☐

The parties are cognizant that the State is liable for Social Security employer's contributions and for making Social Security withholdings pursuant to 42 U.S. Code, Section 418, relative to the compensation of the Second Party for this contract.

**7. CANCELLATION.**

The State Agency shall have the right to terminate and cancel this agreement at any time upon thirty (30) days written notice served on the Contractor by registered or certified mail.

**8. PURCHASING AND SPECIFICATIONS.**

The Contractor certifies by its signature hereinafter that it will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will it attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and paragraph 9 "it" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "it" is construed to mean any person with an interest therein.

**9. CONFLICT-OF-INTEREST LAWS AND PRINCIPLES.**

Contractor certifies by its signature hereinafter affixed that it is legally entitled to enter into contracts with University, and that by holding and performing this contract it will not be violating either any conflict of interest statute (KRS 45A.330-45A.990), KRS 164.390, the Executive Branch Code of Ethics, KRS Chapter 11A, or any other applicable statute or principle, and will not realize any unlawful benefit or gain directly or indirectly from it.

**10. CAMPAIGN FINANCE COMPLIANCE**

Contractor hereby certifies that it is not disqualified from entering into this contract pursuant to the provisions of KRS 121.056(2), which provides that no person who has contributed more than the legal maximum established by KRS 121A.050 in any one (1) election to a slate of candidates for governor and lieutenant governor that is elected to office or any entity in which such person has a substantial interest shall have any contract with the Commonwealth of Kentucky during the term of office following the campaign in which the contributions have been made. Substantial interest means the person making the contribution owns or controls ten percent (10%) or more of the entity or a member of the person's immediate family owns or controls ten percent (10%) or more of the entity or the person and his immediate family together own or control ten percent (10%) or more of the entity. The individual executing this contract for Contractor further swears under penalty of perjury that neither he/she nor the company he/she represents has knowingly violated any provisions of the campaign laws of the Commonwealth, and that the award of this contract or him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

**11. CHOICE OF LAW AND FORUM PROVISION.**

All questions as to the execution, validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

**12. DISCRIMINATION (BECAUSE OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, SEX, AGE, OR DISABILITY) PROHIBITED.**

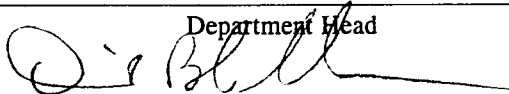
During the performance of this contract, the Contractor agrees as follows:


- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative actions to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex or age or disability.

- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract of understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
  - (4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
  - (5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
  - (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for the further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
  - (7) The Contractor will include the provisions of paragraphs (1) through (7) of Section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
13. Pursuant to KRS 45A.485, the contractor shall reveal any final determination of a violation by the contractor within the previous five year period of pursuant to KRS 136, 139, 141, 337, 338, 341 and 342, pertaining to revenue, taxation, labor, and human rights, that apply to the contractor; and shall be in continuous compliance with those provisions for the duration of the contract.
  14. The contractor agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence which are directly pertinent to this contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the State Agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Director of Procurement Services as meeting the provisions of KRS 61.878 (1) (c) prior to the execution of the contract. The Director of Procurement Services shall not restrict the public release of any information which would otherwise be subject to public release if a state government agency was providing the service.

RECOMMENDED FOR APPROVAL:

FIRST PARTY: MURRAY STATE UNIVERSITY  
Name of Agency

  
Department Head  
Director for Procurement

BY:   
Dr. Randy Dunn, President


Date: 2/18/11

EXAMINED AS TO FORM & LEGALITY:

SECOND PARTY: David Boswell, Boswell, Sims & Vasseur,  
PLLC  
Name

  
University Attorney

SEE ATTACHED PAGE  
Signature

Approved:   
Vice President for Finance and Administrative Services

\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

## INSTRUCTIONS

1. The date on which the agreement is "made" and "entered into" should be the date both parties sign, or, if signing is on separate days, the date on which the later signature is affixed. If the Contractor is a firm, list on a separate sheet of paper the name, and Social Security Number for each individual who will be connected with the contract. The effective date of the contract is the date it is filed, after all necessary approvals, with the Legislative Research Commission. [KRS 45.705]
2. The first "WHEREAS" necessitates a short, simple statement describing the Agency function, be it expressed or implied by the law, relative to which the Contractor's services will be utilized.
3. Contract paragraph 1 (Services) should set forth the necessary instructions to the Contractor concerning the services to be provided. (Describe them, to the extent required.) If space is insufficient, refer to a letter in which instructions are spelled out in detail. Attach a copy of the letter to each copy of the contract.
4. Contract paragraph 2 (Consideration) should be clear and specific as to payment and as to expense reimbursement, if any. Specify whether the Contractor is to be paid in a lump sum on final and satisfactory completion of the contracted service, is to be paid on completion of stated portions of the service, or is to be paid at stated intervals. If fee is determined by any method other than lump sum after completion of all work, specify the method and rate (such as dollars per hour per classification of employee). List the information the Contractor is to provide on his invoice(s).
5. If a contract is being extended with the same terms and conditions (option stated in Contract paragraph 5), use form (Notice of Extension of Personal Services Contract). However, if the new agreement is to involve any change (amounts, instructions, services, or any other provisions), establish a new contract.
6. Contract paragraph 6 requires a determination, based on facts, as to whether the Contractor will be considered and treated as an employee or as an independent contractor within the terms of the federal laws on Social Security. (If he is to be an independent contractor, the state would have no liability for Social Security contribution.)
7. Contract paragraph 7 may be modified, if desired, by deleting the word "thirty" and substituting a shorter-but not longer-period of time. [KRS 45A.695]
8. If this form contract proves inadequate for the specific services involved, particularly with reference to Contract paragraphs 1 and 2, then it may be used as a guide for the drafting of a special-purpose contract document to provide additional (not less) information. A special-purpose contract document, if used, must include all the standard provisions contained in this form contract. These provisions generally reflect legal requirements or policy requirements applicable to all State personal service contracts. If a special-purpose contract is drawn, there must be a notation and appropriate signature on the contract indicating that it was either prepared or approved by the University Attorney.
9. Originating department will submit the contract to Procurement Services and keep one copy of this contract for agency files. [KRS 12.210(1) provides that employment of attorneys is also subject to review by Attorney General and subject to approval by the Governor.]



To whom it may concern:

Re: 1. Services

An internal complaint filed against an MSU employee resulted in a finding of discrimination on behalf of the employee and discipline against the employee. The employee has appealed the determination asserting ADA issues. This matter is presently before the appeal committee for a hearing. Employee, in a related matter, has also filed an internal ADA type claim against various university employees resulting in a conflict of interest for the MSU Office of General Counsel. As such, outside counsel is necessary to provide legal advice to MSU on the issues involved in both matters.

02-18-2011 11:21am From-MSU GENERAL COUNSEL

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PRO-020/06-08

- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract of understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
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- (5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for the further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
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14. The contractor agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence which are directly pertinent to this contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the State Agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Director of Procurement Services as meeting the provisions of KRS 61.878 (1) (c) prior to the execution of the contract. The Director of Procurement Services shall not restrict the public release of any information which would otherwise be subject to public release if a state government agency was providing the service.

## RECOMMENDED FOR APPROVAL:

FIRST PARTY: MURRAY STATE UNIVERSITY  
Name of Agency\_\_\_\_\_  
Department HeadBY: \_\_\_\_\_  
Dr. Randy Dunn, President\_\_\_\_\_  
Director for Procurement

Date: \_\_\_\_\_

## EXAMINED AS TO FORM &amp; LEGALITY:

SECOND PARTY: David Boswell, Boswell, Sims & Vasseur,  
PLLC\_\_\_\_\_  
University Attorney

Name

J. David Boswell

Signature

Approved: \_\_\_\_\_

Partner - Boswell, Sims & Vasseur,  
PLLC

Title

\_\_\_\_\_  
Vice President for Finance and Administrative Services2-18-2011

Date